

FINAL AWARD ALLOWING COMPENSATION  
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 04-142250

Employee: Tina Kelley  
Employer: St. Francis Medical Center  
Insurer: Zurich American Insurance Company  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Open)  
Date of Accident: March 22, 2004

Place and County of Accident: Cape Girardeau County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated July 3, 2007. The award and decision of Administrative Law Judge Lawrence C. Kasten, issued July 3, 2007, is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 25th day of February 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
William F. Ringer, Chairman

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

ISSUED BY DIVISION OF WORKERS' COMPENSATION

AWARD

Employee: Tina Kelley

Injury No. 04-142250

Employer: St. Francis Medical Center

Additional Party: Second Injury Fund – left open

Insurer: Zurich American Insurance Company

Hearing Date: Commenced March 20, 2007

Checked by: LK/kh

Completed March 21, 2007

SUMMARY OF FINDINGS

1. Are any benefits awarded herein? Yes
2. Was the injury or occupational disease compensable under Chapter 287? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease? On or about March 21, 2005
5. State location where accident occurred or occupational disease contracted: Cape Girardeau County, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident happened or occupational disease contracted: The employee repeatedly used her hands and wrists performing her job duties at St. Francis Medical Center.
12. Did accident or occupational disease cause death? No
13. Parts of body injured by accident or occupational disease: Left hand and wrist and right hand and wrist
14. Nature and extent of any permanent disability: 15% permanent partial disability of the left hand and wrist, 15% permanent partial disability of the right hand and wrist, and 15% multiplicity.
15. Compensation paid to date for temporary total disability: None
16. Value necessary medical aid paid to date by employer-insurer? \$563.50

17. Value necessary medical aid not furnished by employer-insurer? \$13,408.86
18. Employee's average weekly wage: \$778.60.
19. Weekly compensation rate: \$519.07/ \$354.05.
20. Method wages computation: By agreement.
21. Amount of compensation payable:

Previously Incurred Medical Bills: \$13,408.86

Medical Mileage: \$382.61

Temporary Total Disability: 1,112.29

Permanent Partial Disability: \$21,375.77

TOTAL: \$36,279.53

22. Second Injury Fund liability: Left Open.

23. Future requirements awarded: None.

Said payments to begin (See Rulings of Law) and be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Kim Heckemeyer.

#### FINDINGS OF FACT AND RULINGS OF LAW

On March 20, 2007, the employee, Tina Kelley, appeared in person and by her attorney, Kim Heckemeyer for a hearing for a final award. The employer-insurer was represented at the hearing by its attorney, Jim Cochrane. Also present for the employer was Teri Kreitzer, the Director of Human Resources. The employee's claim against the Second Injury Fund was left open by the agreement of the parties. At the time of the hearing, the parties agreed on certain undisputed facts and identified the issues that were in dispute. These undisputed facts and issues, together with the findings of fact and rulings of law, are set forth below as follows:

#### UNDISPUTED FACTS:

1. St. Francis Medical Center was operating under and subject to the provisions of the Workers' Compensation Act and its liability was fully insured by Zurich American Insurance Company.
2. On or about March 22, 2004, February 16, 2005 and March 24, 2005, Tina Kelley was an employee of St. Francis Medical Center and was working under the Workers' Compensation Act of Missouri.
3. The employer had notice of the employee's alleged accident or occupational disease.
4. The employee's claim was filed within the time allowed by law.

5. The employee's average weekly wage was \$778.60. The employee's rate of compensation for temporary total disability is \$519.07. The rate of compensation for permanent partial disability is \$347.05 per week in 2004 and \$354.05 per week in 2005.
6. The employer-insurer has paid a total of \$563.50 in medical aid.
7. The employer-insurer has not paid any temporary disability.

Judicial Notice of the contents of the Division's files in 01-162156 and 04-142250 was taken.

#### ISSUES:

1. Accident or occupational disease
2. Medical causation
3. Claim for previously incurred medical
4. Claim for mileage under Section 287.140 RSMo.
5. Temporary total disability
6. Permanent partial disability
7. Res Judicata due to Compromise Settlement in Injury Number 01-162156.

#### EXHIBITS:

The following exhibits were offered and admitted into evidence:

##### Employee's Exhibits

- A. Medical records for October 29, 2001 claim
- B. Medical records for present claim (The record was left open for ten days for the submission of this exhibit. It was received and admitted on March 21, 2007.)
- C. Medical bills
- D. Medical mileage summary
- E. Deposition of Dr. Levy
- F. Proposed compromise settlement agreement in injury number 01-162156
- G. Approved compromise settlement in injury number 01-162156

##### Employer-insurer's Exhibits

1. Claim for compensation in injury number 01-162156
2. Approved stipulation for compromise settlement in injury number 01-162156

3. Original claim for compensation in injury number 04-142250
4. Medical records of Dr. Deisher
5. Medical records of Dr. Stahly
6. Report of Dr. Eaton
7. Deposition of Dr. Eaton
8. Medical records of Dr. Straubinger
9. Incident report
10. Deposition of Dr. Levy
11. Reports of Dr. Levy
12. Deposition of Tina Kelley
13. Deposition of Steve Taylor
14. Deposition of Dale Gerecke
15. Volume stat report
16. Termination notice
17. Amended claim for compensation in injury number 04-142250
18. Summary of hours worked by Tina Kelley from December of 2004 through April 2, 2005

Note: Several of the exhibits had various highlighted and underlined portions that were present when offered and admitted into evidence.

During the hearing, the employer-insurer made objections to parol evidence testimony about the compromise settlement in Injury Number 01-162156. The ruling on the objection was taken under advisement. The employer-insurer's objection is sustained. Employer-Insurer Exhibits 12, 13, and 14 were offered and admitted subject to the parol evidence objection. The deposition testimony of Steve Taylor, Dale Gerecke, and the employee were not considered in my decision. The testimony of the employee and Teri Kreitzer that involved parole evidence concerning the compromise settlement were not considered in my decision. Employee Exhibit F, the proposed compromise settlement agreement was not considered in my decision. These exhibits shall be retained in the Division's file and the testimony shall be part of the transcript for purposes of appellate review.

Witnesses:

1. Tina Kelley, the employee
2. Marlene Lyon, for the employer-insurer
3. Teri Kreitzer, for the employer-insurer

Briefs: The employee filed her brief on April 9. The employer-insurer filed its brief on April 16. A response to the employer-insurer's brief was filed by the employee on May 1.

## FINDINGS OF FACT:

Based on a review of the evidence, I make the following Findings of Fact:

The employee started working for St. Francis Medical Center in February of 1982 and stopped working there in April of 2005. When she started at St. Francis, she had no complaints with her upper extremities. From 1982 through 1990, she worked as a certified respiratory therapist. In 1990, she switched to the sleep lab and worked with sleep studies. She became a registered polystenograhay technologist. She had no problems with her upper extremities.

01-162156 Claim:

### 2001:

In June of 2001, the employee became a hyperbaric technologist and worked in the hyperbaric center. Her job duties included data entry, and helping patients. She normally helped 6-10 patients a day and spent 15-35 minutes per patient. The data entry portion of her job was 4-8 hours a day. She routinely moved patient's charts. In October of 2001, she started developing complaints of pain, tingling, and burning in her elbows into her small and ring fingers. She reported that injury and received treatment from the employer.

In November of 2001, the employee started seeing Dr. Ryan for bilateral elbow pain with numbness and tingling down the lateral aspect of the arms into the middle, ring and little fingers. The employee had decreased sensation in the little and ring fingers. The employee was prescribed wrist splints. Dr. Ryan's assessment was bilateral lateral epicondylitis; bilateral ulnar neuritis; bilateral shoulder pain; and bilateral wrist pain due to trying to move her wrist against the splints. The employee started receiving physical therapy. The employee had numbness in the middle, ring and small fingers bilaterally. The employee had aching from the elbows into the forearms and reported popping and cracking in the right wrist with active use. In December, Dr. Straubinger diagnosed right and left lateral epicondylitis and performed bilateral epicondylar injections.

### 2002:

The employee continued to see Dr. Ryan in January and February for bilateral lateral epicondylitis. When her elbows got worse in March, she was referred to Dr. Tobin. Dr. Tobin diagnosed bilateral lateral epicondylitis and olecranon bursitis. In April, the median and ulnar nerve compressions sites at the elbow and the wrist were negative. Dr. Tobin re-injected the left lateral epicondyle. In mid-April Dr. Tobin diagnosed radial tunnel syndrome.

She then saw Dr. McNabb her family doctor. In April, the employee had bilateral elbow pain and forearm pain with numbness primarily in the middle, ring and little fingers worse on the left. Dr. McNabb's impression was ulnar neuropathy and suspected carpal tunnel syndrome.

The employee saw Dr. Lehman in April with substantial tenderness and soreness in her forearms. Dr. Lehman thought the employee had severe radial nerve entrapment worse on the left than right, and recommended a radial nerve release and a tennis elbow repair. He referred the employee to Dr. Koo.

On April 26, 2002, the employee filed a Claim for Compensation in Injury Number 01-162156. Listed as the injured body parts was left and right upper extremities. The description of the injury was that the employee was doing repetitive work with left and right extremities resulting in injuries. The date of the accident/occupational disease was October 29, 2001.

In May, the employee saw Dr. Coin. The employee told him that in October of 2001 she started having pain in the lateral elbows and proximal forearms and intermittent numbness in all of her digits. The left side was worse than the right. On exam, the employee had an equivocal Tinel's sign at the carpal tunnels bilaterally and a negative provocative test. There was a positive Phalen's sign on the left but not on the right. Dr. Coin diagnosed upper extremity tenosynovitis versus nerve entrapment. He ordered a nerve conduction study to determine if she had nerve entrapment syndrome. Dr. Peebles performed the studies. The employee told him that she had pain in the medial and lateral elbows, nighttime numbness in the hands predominantly in the ulnar nerve distributions. Dr. Coin stated that the nerve studies were consistent with a relatively mild ulnar neuropathy at the left elbow. The right ulnar and right and left median nerve conduction studies were normal.

In May, Dr. McNabb stated that the employee had findings consistent with ulnar neuropathy and possible radial entrapment and carpal tunnel syndrome.

In June, Dr. Koo diagnosed chronic left lateral epicondylitis, left radial nerve entrapment and left ulnar nerve entrapment at the cubital tunnel. She performed a left lateral epicondylectomy with extensor tendon release, a left ulnar nerve submuscular transposition at the medial elbow and left radial nerve release. In late June, Dr. Koo diagnosed right radial nerve entrapment and performed a right radial nerve release.

In October, Dr. McNabb's impression was left elbow epicondylitis and left brachial radialis tenosynovitis.

At the end of November, the employee had therapy for left lateral elbow pain, right medial elbow pain and intermittent tingling in the ulnar distribution of the right forearm and hand.

### 2003:

At the end of January, Dr. Koo stated that the best thing for the employee to do was to look for another occupation.

In March and May, the employee saw Dr. McNabb for bilateral pain from the elbows to the hands. Dr. McNabb diagnosed bilateral ulnar neuropathy and degenerative joint disease of the elbows.

Dr. Eaton evaluated the employee on December 15, 2003. The pain inventory was left elbow, right elbow, left forearm, right forearm, and left greater than right hand tingling. The pain drawing showed numbness along the ulnar nerve distribution bilaterally, and burning sensations at the forearms and hands with an aching feeling in the deep part of the palms. The employee had decreased sensation to the left ulnar distribution in the third, fourth and fifth digits.

Testing on the elbows was positive bilaterally for lateral epicondylitis. Phalen's testing caused tingling in the left third, fourth and fifth digits. The Finkelstein's test was positive on the right and negative on the left. The employee had scars on the lateral aspect of the extensor surface of the forearms, both at the lateral epicondyle bilaterally and on the dorsum of the forearm just below the elbow. There was also a scar from the left ulnar nerve transposition across the left elbow.

Dr. Eaton diagnosed and rated the following conditions:

1. Bilateral radial nerve entrapment with surgical releases; 20% of each upper extremity at the elbow
2. Bilateral left lateral epicondylitis with surgical treatment; 20% of each upper extremity at the elbow

3. Left ulnar nerve impingement with surgical transposition and ongoing neuropathic pain; 35% of the left upper extremity at the elbow
4. Bilateral olecranon bursitis; 5% of each upper extremity at the elbow
5. Bilateral myofascial pain; 15% of each upper extremity at the shoulder.
6. DeQuervain's disease in the right wrist, 10% of the right upper extremity at the wrist.

Dr. Eaton did not suggest treatment for the DeQuervain's disease. He stated that Dr. Coin mentioned upper extremity tenosynovitis which is a synonym for DeQuervain's disease. Dr. Eaton did not believe that Dr. Coin treated the employee for that condition.

#### 2004:

On March 1, the employee saw Dr. Deisher. The employee stated that after surgery by Dr. Koo, she noted improvement in her symptoms but the symptoms were coming back. Her arms hurt and fell asleep. She had pain in the inner and outer aspect of her elbows and achiness of her forearms. Her elbows bothered her more with repetitive activities at work. Dr. Deisher stated that the employee did not have an impressive Tinel's sign over either carpal tunnel. Phalen's test caused more forearm discomfort, ache in the elbows, and numbness in the elbows. There were no signs of DeQuervain's tenosynovitis. He recommended an ergonomic assessment of her work station by a physical or occupational therapist.

The employee complained of an increase in elbow pain bilaterally, increasing discomfort along the forearms, as well as recurring numbness of the hands. Dr. Deisher stated that the repetitive activity that she did at the Wound Center including the degree of data entry, lifting and moving patients, certainly could have aggravated her symptoms and been related to her employment. Based on the information, Dr. Deisher stated that it appeared that the employee's work had aggravated the conditions and could be a contributing factor for the problems that she has complained of in the past and presently complained of.

Dr. Deisher ordered an MRI of the right elbow to check for epicondylitis. He also ordered bilateral EMG nerve conduction studies for the ulnar nerve to compare with the studies done by Dr. Peeples in May of 2002. On March 22, 2004, Dr. Stahly performed a nerve conduction study which showed mild right carpal tunnel syndrome, left carpal tunnel syndrome and no evidence of cubital tunnel syndrome. The EMG was unremarkable and the MRI of the right elbow was within normal limits. On March 31, Dr. Deisher noted that the employee had significant improvement. The nerve conduction studies showed mild carpal tunnel syndrome which Dr. Deisher thought was asymptomatic.

At the end of April, Dr. McNabb diagnosed ulnar neuropathy and continued to prescribe Ultram, Neurontin and Bextra.

On April 30, the employee had a Greenleaf evaluation which listed diagnoses of lateral epicondylitis, radial tunnel syndrome and cubital tunnel syndrome. On May 10, Dr. Deisher stated that the employee was treated for lateral epicondylitis, radial tunnel syndrome and cubital tunnel syndrome. It was his opinion that the employee had reached maximum medical improvement. He rated the employee at 26% permanent partial disability of the left upper extremity.

In July, Dr. McNabb stated that the employee would continue to require long term medical management of ulnar neuropathy with chronic pain.

On August 31, Dr. Deisher estimated the employee's permanent partial impairment for the right upper extremity to be approximately 20%.

In September and December, Dr. McNabb assessed ulnar neuropathy which he prescribed medicine for.

2005:

On January 27, Dr. Deisher reviewed the activities of a hyperbaric technician at St. Francis. He thought that the employee was capable of handling the job with the exception of transferring patients in need of total assistance. He did not think the employee should push or pull more than 30 pounds. If taking care of a patient required more than minimal assistance, he recommended a second employee to help transfer the patient. The employee may have intermittent soreness but the anti-inflammatory medications prescribed by her other physicians should suffice.

In January of 2005, the employee's attorney showed her a copy of the nerve conduction studies done in March of 2004. That was the first time she learned about the positive findings that she had carpal tunnel syndrome.

The employee signed a stipulation for compromise settlement on February 1, 2005 in Injury Number 01-162156. The settlement was approved by an Administrative Law Judge on February 4, 2005. Paragraph 1 stated that on or about October 29, 2001, the employee sustained an accident/occupational disease arising out of and in the course of the employee's employment. Paragraph 6 stated "That there are disputes between the parties as to ... multiple diagnoses of various occupational diseases and conditions, and treatment of same related to and at level of the left elbow and right elbow . . . disfigurement for scarring on the left and right upper extremities." Paragraph 7 stated that the parties entered into a compromise lump sum settlement for \$60,234.45. The settlement was based upon 40% of the left upper extremity at the 210 week level; 30% of the right upper extremity at the 210 week level; multiplicity; and 12 weeks of disfigurement. Under Additional Comments, it states "This Stipulation for Compromise Settlement and Lump Sum Payment is intended to close out all pending issues and claims."

The employee testified that she did not have any complaints with her wrists or hands, at the time she settled her case.

Carpal Tunnel Syndrome Claim:

The employee continued to work in the hyperbaric unit. Prior to February of 2005, patient data was entered into the St. Francis data base only. In February of 2005, the employee's job duties changed. St. Francis was in a contracted service with National Healing Wounds Center who implemented an internet data base in addition to the St. Francis data base. The deadline to get all of the data entered was the end of March. The employee put the same data into the St. Francis data base and the internet data base. For each patient, the employee put the same data in twice and handled the patient chart twice. Another part of her job was downloading photos into a data base. In February of 2005, she did not take breaks from typing except for getting patients ready for their treatment and for lunch.

Marlene Lyon testified that in February and March 2005, she was the director of the Wound Care Center and was the employee's supervisor. National Healing Center was in partnership with St. Francis. The employee was responsible for the care and treatment of patients including oxygen monitoring. From January of 2005 through March of 2005, the employee averaged 5-6 patients a day. Each patient took an average of 30 minutes, and an average of 5 patients was a total of 2.5 hours per day in direct patient care. The employee was also responsible for data entry on each patient. In 2005, the data entry was doubled for each patient. The National Healing Center started an internet data base. There was double data entry on each patient's case since data was required in the internet data base and the St. Francis data base. Ms. Lyons testified that she did about 50% of the web entries. In 2004, St. Francis evaluated the employee's work station twice. The volume stats in January and February of 2005, was higher than in October and November of 2004.

During the first two weeks of February, the employee spent 100% of the time doing data entry except for taking care of her hyperbaric patients. Some days she spent more than 8 hours working but might not have overtime due to taking days off. The employee started noticing a difference in her symptoms during the two weeks after starting the double data entry. Her thumbs, index fingers, and middle fingers started tingling. The symptoms were in a different area than before and were more in the hands and wrists. She reported the complaints to Marlene Lyon and asked for medical treatment in February.

The employee incident/illness report was signed and dated by the employee on February 16, 2005. It listed a date of accident as "3-22-04 diagnosed." Listed as the activity causing the injury, is data entry volume on the computer data base. The nature of the injury was "hands tingling, numbness, dropping objects". The parts of the body affected were left wrist and hand and right hand and wrist. In the description of how the incident occurred, the employee stated the she "noticed hand hurting, numbness in both hands radiating down wrist, much worse on days that I enter data most of day. Then realized why when nerve conduction test was done on 3/22."

She was sent to Dr. Straubinger on February 24. Listed as the date of injury was January 1, 2004. The employee was a long term employee of St. Francis Medical Center and was presenting with discomfort in both the left and right wrists, left more than right to include pain, numbness and weakness, which was significantly noted by her in January of 2004. The past history showed upper extremity cumulative trauma with a date of injury of October 29, 2001. After the surgeries by Dr. Koo, the employee returned to work, was released and continued to work in the hyperbaric chamber which included entering on the computer data base images (500 per month) and hands-on patient care with pushing in and pulling out patients from the chamber. On March 22, 2004, Dr. Stahly did an EMG and nerve conduction study which showed mild right carpal tunnel syndrome, left carpal tunnel syndrome, and no evidence of cubital tunnel syndrome. The employee stated she did not know the results of the EMG and nerve conduction study. The employee had nocturnal pain and numbness.

The employee had a negative Tinel's sign on the right median nerve and a mildly positive Tinel's sign on the left median nerve. Dr. Straubinger performed nerve conduction testing which showed a normal left and right median, but the left was at the borderline threshold for the label of median neuritis. The numbers seemed improved over the 2004 study. Dr. Straubinger diagnosed left greater than right median neuritis improved over March of 2004. He prescribed Proflex splints at night and maintained her routine medication. Dr. Straubinger stated historically it appeared to be a work-related illness and the working date of injury was listed as January 1, 2004.

Included in Dr. Straubinger's records was a section that the employee completed and signed. The listed injury date was March 22, 2004. The employee had numbness, tingling, loss of grip, pain in the hands, wrists and forearm which awoke her at night. The employee had decreased coordination with her hands. Her hand felt swollen and she is unable to make a fist or grip. A diagram of her hands showed numbness and tingling in the thumb, index and middle finger of both hands extending into the hand into the palm areas of those fingers and tingling on the tops of those fingers. She also diagrammed pain and tingling in the underside of her forearms.

After the one examination by Dr. Straubinger, the employer-insurer denied further treatment. The employee continued to work in the hyperbaric unit. She filed a Claim on March 21, 2005 for an alleged accident or occupational disease dated March 22, 2004. The parts of the body were left and right hands at the wrist. The description of the injury was repetitive work with hands resulting in injuries.

The employee testified that she left St. Francis Medical Center in April of 2005 because two of her doctors told her she needed to get a less demanding job for her hands.

Ms. Lyons testified that the employee did not tell her she left because of her hands. The employee told Ms. Lyons that she left for a better job. The St. Francis Termination Notice dated March 24, 2005 showed that the employee's last day of work was March 30, 2005. The employee resigned with proper notice and the reason given was another job opportunity.

The employee started working at Apria Healthcare in April of 2005 as a respiratory therapist. She delivered and taught patients how to use a C-Pac machine. This job was much less demanding on her hands.

The employee requested additional treatment but it was not provided. She sought treatment on own through Dr. McNabb. The employee saw Dr. McNabb on May 31 who stated that she had a positive Tinel's and positive Phalen's signs. He noted the nerve conduction test of March 22, 2004 and diagnosed carpal tunnel syndrome. The employee had been using wrist splints with no symptomatic relief. Due to the employee's persistent symptoms, particularly in the left hand, and nerve conduction studies which indicated left carpal tunnel syndrome, Dr. McNabb recommended a surgical evaluation.

In August of 2005, the employee went to work at Sleep Telemedicine. She left Apria because she was taking Neurontin at night and could not be on call while taking it. She is the clinical manager at Sleep Telemedicine and performs patient teaching, instruction to technicians of how to perform a sleep study, and quality assurance. She is able to take breaks when she needs to. This job is much less demanding on her hands than St. Francis.

On August 15, Dr. McNabb noted sensory deficits and loss of grip strength in her right hand. Dr. McNabb's impression was right carpal tunnel syndrome. He referred her to Dr. Koo. The employee was to continue Neurontin to provide symptomatic relief and continue with her wrist splints.

The employee saw Dr. Koo on September 23, 2005 for symptoms of carpal tunnel syndrome. Dr. Koo ordered a nerve conduction and EMG that was done by Dr. Wayne. Dr. Wayne stated that over the last several weeks to months, the employee had been having steadily worsening pain, numbness and tingling mainly in the right and left first three fingers. She noticed difficulty with coordination and night pain. The Phalen's test was more positive on the right than the left. The Tinel's sign was positive at both wrists. The employee had decreased sensation in the right and left median nerve distribution. Dr. Wayne performed a bilateral upper extremity EMG/NCS and stated that it was a normal nerve conduction study with no evidence of carpal tunnel or cubital tunnel syndrome. The EMG was normal. Dr. Koo injected her carpal canals.

On November 11, the employee told Dr. Koo that the injections helped but her symptoms had returned. Carpal tunnel releases were scheduled despite the normal nerve conduction velocity studies. On December 22, Dr. Koo performed bilateral endoscopic carpal tunnel releases and bilateral wrist flexor tenosynovectomy. On January 6, Dr. Koo stated that the employee was doing well and returned her to work on January 9, 2006, full duty with no restrictions.

#### 2006:

On September 1, 2006, the employee saw Dr. McNabb. His impression was neuropathy in the upper extremities and status post ulnar nerve decompression and bilateral carpal tunnel release.

#### 2007:

The employee filed an amended claim on January 8, 2007. The date of accident or occupational disease was changed from March 22, 2004 to March 22, 2004, February 16, 2005 or March 24, 2005.

The employee testified that the carpal tunnel surgery by Dr. Koo made her symptoms much better. She does not take Neurontin as many times and takes less of a dose than prior to the surgery. She has

decreased fine motor skills and loss of strength in her hands and wrists. She has pain in her hands. She does not sleep as well as before. The employee is working full time.

She incurred 1,424 medical miles which have not been reimbursed. She was off work from the date of the surgery, December 22, 2005, until January 6, 2006.

Dr. Levy saw the employee on February 16, 2006 with regard to trauma extending over a period of time while employed at St. Francis Medical Center. Dr. Levy diagnosed the employee with bilateral carpal tunnel releases and chronic strain in both wrists. He also diagnosed left lateral epicondylectomy/extensor tendon release; left ulnar nerve submuscular transposition at the medial elbow; left radial nerve release; right radial nerve release; right ulnar nerve submuscular transposition at the medial elbow; and chronic strain in both elbows. It was Dr. Levy's opinion that the employee had a 25% permanent partial disability of each upper extremity at the wrist and 25% permanent partial disability of each upper extremity at the elbow.

In his deposition, Dr. Levy stated that when Dr. Koo was treating the employee in 2002, he did not see a diagnosis of or treatment for carpal tunnel syndrome in her records or the therapy records. Dr. Levy stated that in March of 2004, Dr. Deisher stated that the EMG/nerve conduction study showed mild carpal tunnel but Dr. Deisher thought it was asymptomatic.

It was Dr. Levy's conclusion that the carpal tunnel syndrome was a result of the hand intensive work related activities and that the employee had a permanent partial disability of 25% of each upper extremity at the wrist due to the work activity that she had performed for a number of years. It was Dr. Levy's opinion that the disability ratings of the wrists were a result of the bilateral carpal tunnel releases as well as the chronic strains of both wrists. It was further his opinion that the combination of the carpal tunnel being on both sides created a disability greater than the simple total of each and a loading factor should be added. It was Dr. Levy's opinion that the work she did was a substantial cause of the occupational disease that she developed.

Dr. Levy thought that after having carpal tunnel releases that a person would be expected to be off work for a couple of weeks.

It was Dr. Levy's opinion that the use of a computer doing data entry could lead to the development of numbness and tingling in her hands. She did not describe exactly when she developed numbness and tingling in her hands, but developed them over the next several years after 2000.

## RULINGS OF LAW:

### ***Issue 7. Res Judicata***

The employer-insurer is alleging that the employee's alleged carpal tunnel syndrome claim is barred as a result of the compromise settlement in injury number 01-162156 with a date of injury of October 29, 2001. The compromise settlement was signed by the employee on February 1, 2005 and an administrative law judge approved the settlement on February 4, 2005.

The employee started getting treatment in November of 2001, and was treated by numerous doctors prior to settling her October 29, 2001 claim. The medical records show that the employee had bilateral elbow and forearm pain with numbness and tingling down the lateral arms and into the middle, ring, and little fingers of both hands. It was noted several times in the records that the employee's numbness was in the ulnar nerve distribution. Nerve tests in 2002 showed ulnar neuropathy. The employee had various diagnoses by various treating doctors including ulnar neuropathy, degenerative joint disease of the elbow, brachial radials tenosynovitis, bilateral ulnar neuritis, olecranon bursitis, bilateral lateral epicondylitis, bilateral radial tunnel syndrome, and left ulnar nerve entrapment at the cubital tunnel. All of Dr. Eaton's multiple

diagnoses and ratings were at the elbow except for the myofascial pain rated at the shoulders and the right sided DeQuervain's disease rated at the wrist. Dr. Deisher saw the employee after the rating and stated that the employee did not have any signs of DeQuervain's tenosynovitis. Dr. Deisher stated that the employee had been treated for conditions that were clearly at the elbow level. The only treatment including surgery was at the elbow area. The surgical scars were at the elbow area.

There was no definite diagnosis of symptomatic carpal tunnel syndrome until after the claim was settled. The first mention of possible carpal tunnel syndrome was in April and May of 2002 when the employee's family doctor, Dr. McNabb's impression was ulnar neuropathy and suspected carpal tunnel syndrome. None of the other various treating doctors mentioned carpal tunnel syndrome until March of 2004 when Dr. Deisher ordered nerve tests specifically for the ulnar nerve and not carpal tunnel syndrome. Although the tests showed mild carpal tunnel syndrome, it was Dr. Deisher's opinion that it was asymptomatic. There was no treatment for the carpal tunnel syndrome prior to the settlement.

In the Compromise Settlement, the parties listed a number of disputed issues including multiple diagnoses of various occupational diseases and conditions, and treatment of same related to and at level of the left elbow and right elbow; and disfigurement for scarring on the left and right upper extremities. The settlement was based upon 40% of the left upper extremity at the 210 week level, 30% of the right upper extremity at the 210 week level, multiplicity and 12 weeks of disfigurement. The additional comments section states the settlement intended to close out all pending issues and claims.

Under the cases cited by the employer-insurer in its' brief, the entire context of the writing and the whole instrument must be considered to determine if there is ambiguity in the settlement.

Included in the disputed issues in the settlement was the treatment of occupational diseases and conditions related to and at the level of the left and right elbow, and disfigurement for scarring. The settlement was based on disability at the 210 week level which is the elbow. The only level of the upper extremity stated in the compromise settlement agreement was the right and left elbows. There was no mention of hands, wrists, or the 175 week level. I find that considering the whole instrument and the whole context of the writing that the Stipulation for Compromise Settlement is not ambiguous. I find that the Stipulation for Compromise Settlement clearly settled only the occupational diseases and conditions that were diagnosed, treated and related at the level of the elbow including the surgeries that were performed at the elbow level. Since carpal tunnel syndrome affects the hand and wrist and does not affect the elbow, I find that employee's carpal tunnel syndrome claim is not barred as a result of the compromise settlement in injury number 01-162156.

### ***Issue 1 and Issue 2: Accident or Occupational Disease and Medical Causation***

The employee's credible testimony was that in February of 2005, she continued to work in the hyperbaric unit. The employee testified that her job duties changed and she was doing double entry of the patient's data. Ms. Lyon's testimony corroborated the employee's testimony about the double entry of data for each patient's case. The data was put in both the St. Francis data base and the internet base for National Healing Center.

The employee's credible testimony was that her symptoms were in a different area than before. Her thumbs, index fingers and middle fingers started tingling. Dr. Straubinger's records from February 24, 2005, corroborate her testimony. The employee had numbness, tingling, loss of grip, and pain in the hands and wrists. The hand diagram showed numbness and tingling in the thumb, index and middle finger of both hands extending into the hand into the palm areas of those fingers. I find that the employee's complaints and symptoms beginning in February of 2005 were different than her previous symptoms and complaints from her 2001 claim and settlement on her elbows. The employee continued to work in the hyperbaric unit and filed a claim for compensation on March 21, 2005.

Dr. Straubinger diagnosed bilateral median neuritis and it was his opinion that it appeared to be a work-related illness. Dr. McNabb diagnosed carpal tunnel syndrome, recommended a surgical evaluation and referred her to Dr. Koo. Dr. Koo performed bilateral carpal tunnel releases. Dr. Levy diagnosed the employee with bilateral carpal tunnel syndrome. It was his opinion that the employee's hand intensive work activities were a substantial cause of the occupational disease.

The employee's testimony; the medical records including the opinion of Dr. Straubinger; and the report and testimony of Dr. Levy are all credible and support a conclusion that the employee's repetitive work for St. Francis Medical Center was a substantial factor in causing her to develop bilateral carpal tunnel syndrome. There is no contrary or contradictory medical opinion on this issue.

Based on the evidence, I find that on or about March 21, 2005, the employee sustained a compensable accident or occupational disease that arose out of and in the course of her employment with St. Francis Medical Center and was clearly work related. I further find that the employee's work at St. Francis Medical Center was a substantial factor in causing her bilateral carpal tunnel syndrome and the resulting medical condition, disability and need for surgery. I further find that the employee's bilateral carpal tunnel syndrome and the need for medical treatment for this condition including the surgery are medically causally related to the work accident or occupational disease.

### ***Issue 3. Claim for Previously Incurred Medical***

The employee is claiming previously incurred medical bills in the amount of \$15,347.32 which are contained in Employee's Exhibit C. The employer-insurer is disputing the medical causal relationship of the bills. The employer-insurer is not disputing the bills with regard to authorization, reasonableness, and necessity.

Employee's Exhibit C-1 is the medical bill of Dr. Deisher. I find that the medical bill is not medically causally related to the employee's bilateral carpal tunnel syndrome claim but is related to the employee's claim for the bilateral elbows that had previously been settled. The employer-insurer is not liable for the \$500.00 bill.

Employee Exhibit C-2 is a \$300.00 bill from Dr. Stahly. Dr. Deisher ordered nerve conduction tests for the ulnar nerve which Dr. Stahly performed on March 22, 2004. I find that the bill is not medically causally related to the employee's bilateral carpal tunnel claim. I find that the employer-insurer is not liable for the bill to Dr. Stahly.

Employee Exhibit C-3 is numerous medical bills from Dr. McNabb that total \$1,344.46. Dr. McNabb was the employee's personal physician and most of the bills are for conditions and treatment not related to the bilateral carpal tunnel syndrome. I find that the only bills that are medically causally related to the employee's bilateral carpal tunnel syndrome is the \$79.00 bill for her May 31, 2005 treatment and the \$127.00 bill for the August 15, 2005 treatment which total \$206.00. I find that the remaining bills contained in Employee's Exhibit C-3 are not medically causally related to the bilateral carpal tunnel syndrome claim and the employer-insurer is not liable for those bills.

I find that the medical bills contained in Employee's Exhibit C-4, C-5, C-6, C-7, and C-8, are medically causally related to the employee's bilateral carpal tunnel syndrome claim.

I find that the employer-insurer is responsible for and is directed to pay the employee the sum of \$13,408.86 for the following previously incurred medical bills:

C-3	Dr. McNabb	\$ 206.00
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C-4	Dr. Staubinger	\$ 524.00
C-5	Dr. Koo	\$2,845.00
C-6	Dr. Wayne	\$2,627.00
C-7	Des Peres Hospital	\$7,133.36
C-8	Metro West Anesthesia Group	\$ 73.50

Note: The employer-insurer sent the employee to Dr. Staubinger on February 24, 2005. The \$524.00 bill in C-4 is for that date of service. The employer-insurer paid \$563.50 in medical benefits. The employer-insurer is entitled to a credit if this bill has previously been paid by them.

***Issue 4. Claim for Mileage***

The employee is claiming medical miles under Section 287.140 RSMo. Employee Exhibit D is a mileage report that listed twelve trips totaling 1,424 miles. I find that the following trips are not medically causally related to the employee's bilateral carpal tunnel syndrome: April 20, 21, and 26, 2005; June 15, 2005; and September 1, 2006. I find that the employer-insurer is not liable for those medical miles.

I find that the medical miles incurred on February 24, May 31, August 15, September 23, November 11, and December 22, 2005; and January 6, 2006, were medically causally related to the employee's bilateral carpal tunnel syndrome.

I find that the employer-insurer is responsible for and is directed to pay to the employee the sum of \$382.61 for 1,109 medical miles at the rate of .345 cents per mile.

***Issue 5. Temporary Total Disability***

The employee is claiming 2 and 1/7 weeks of temporary total disability benefits beginning on December 22, 2005 and ending on January 6, 2006. Dr. Koo performed surgery on December 22, 2005. Dr. Koo kept the employee off work until January 6, 2006. I find that the employee is entitled to 2 and 1/7 weeks of temporary total disability benefits starting on December 22, 2005 and ending on January 6, 2006. The employer-insurer is therefore ordered to pay to the employee \$1,112.29 which represents 2 1/7 weeks of temporary total disability at the rate of \$519.07.

***Issue 6. Nature and Extent of Permanent Partial Disability***

It was Dr. Levy's opinion that as a result of the carpal tunnel syndrome the employee sustained a permanent partial disability of 25% of each hand and wrist. It was further his opinion that the combination of the carpal tunnel syndrome being on both sides created a disability greater than the simple total of each and a loading factor should be added.

Based on a review of the medical records, Dr. Levy's permanent partial disability rating, and the testimony of the employee, I find that as a direct result of the work related bilateral carpal tunnel syndrome the employee has sustained a 15% permanent partial disability of the right hand and wrist at the 175 week level (26.25 weeks) and a 15% permanent partial disability of the left hand and wrist at the 175 week level (26.25 weeks). The employee is therefore entitled to 52.5 weeks of compensation for permanent partial disability.

Based upon the testimony of the employee and Dr. Levy, and a review of the medical records, I find that the employee is entitled to an additional 15% for multiplicity, which is an additional 7.875 weeks of

compensation (52.5 weeks x 15% equals 7.875weeks).

The employer-insurer is therefore ordered to pay to the employee a total of 60.375 weeks of compensation at the rate of \$354.05 per week for a total award of permanent partial disability of \$21,375.77.

ATTORNEY'S FEE:

Kim Heckemeyer, attorney at law, is allowed a fee of 25% of all sums awarded under the provisions of this award for necessary legal services rendered to the employee. The amount of this attorney's fee shall constitute a lien on the compensation awarded herein.

INTEREST:

Interest on all sums awarded herein shall be paid as provided by law.

Date: \_\_\_\_\_

Made by:

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Lawrence C. Kasten  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

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Mr. Lucas Boling  
*Acting Director*  
*Division of Workers' Compensation*